

**STATE OF CALIFORNIA
REGIONAL WATER QUALITY CONTROL BOARD, LOS ANGELES REGION**

)	COMPLAINT NO. R4-2006-0045
In the matter of:)	ADMINISTRATIVE CIVIL LIABILITY
)	FOR
UNIVERSAL WASTE SYSTEMS, INC.)	VIOLATIONS OF THE CALIFORNIA WATER CODE
)	(NPDES PERMIT NO. CAS000001)

UNIVERSAL WASTE SYSTEMS, INC. IS HEREBY GIVEN NOTICE THAT:

1. Universal Waste Systems, Inc. (Permittee) is alleged to have violated requirements contained in State Water Resources Control Board Order No. 97-03-DWQ, NPDES Permit No. CAS000001, for which the California Regional Water Quality Control Board, Los Angeles Region (Regional Board), may impose liability under California Water Code (CWC) section 13385.
2. A hearing shall be conducted on this Complaint by the Regional Board or Regional Board Hearing Panel (Hearing Panel) within ninety days after service of this Complaint on the Permittee, unless the Permittee waives the hearing and pays the recommended administrative civil liability amount of \$15,940.
3. The Permittee and/or Permittee's representatives will have an opportunity to be heard and to contest the allegations in this Complaint and the imposition of civil liability by the Regional Board. A notice containing the date, time and location of the hearing will be mailed to the Permittee not less than ten days prior to the hearing date.
4. At the hearing, the Regional Board will consider whether to affirm, reject or modify the proposed administrative civil liability or whether to refer the matter to the Attorney General for recovery of judicial civil liability in a greater amount.
5. Storm water runoff and authorized non-storm water discharges from the Permittee's facility at 13316 Leffingwell Road in the City of Whittier are regulated under the State's General Permit for Discharges of Storm Water Associated with Industrial Activities, Excluding Construction Activities, Order No. 97-03-DWQ, NPDES No. CAS000001 (General Permit), WDID No. 4 19 I018901. The Permittee's facility discharges these waters to the Coyote Creek, navigable water of the United States.
6. CWC § 13376 requires any person discharging pollutants or proposing to discharge pollutants to navigable waters of the United States within the jurisdiction of the Regional Board to file a report of discharge, and prohibits the discharge of pollutants except as authorized in waste discharge requirements issued by the Regional Board. CWC § 13385(a) (1) provides that any person violating CWC § 13376 shall be civilly liable, and CWC § 13385(c) provides that the

Regional Board may administratively impose civil liability in an amount not to exceed ten thousand dollars (\$10,000) for each day the violation occurs.

BACKGROUND

7. The Permittee operates a refuse system, which discharges waters containing pollutants to navigable waters of the United States, and is therefore subject to the requirements of the General Permit.
8. The Permittee's Notice of Intent (NOI), the General Permit enrollment application form, filed on July 21, 2004, listed "Universal Waste Systems, Inc" as the facility's operator and "4953" as the Standard Industrial Classification (SIC) code, which is identified as Refuse Systems and this activity is required to be enrolled in the General Permit.
9. Under the General Permit, the Permittee is allowed to discharge storm water runoff associated with industrial activities into the Coyote Creek, navigable water of the United States, but only under specified conditions.
10. The General Permit (SECTION B, No.14) requires the Permittee to submit an annual report by July 1st of each year.
11. Pursuant to CWC § 13399.31, a Notice of Non-Compliance (NNC) was mailed to Universal Waste Systems, Inc. on August 24, 2005 for failure to submit the 2004-05 stormwater annual report. A Notice of Violation (NOV) was then mailed to the Permittee on October 17, 2005 for failing to submit the subject annual report. The NOV warned the Permittee of the mandatory fines that are required to be assessed for failure to submit the stormwater annual report.
12. On November 4, 2005, Regional Board staff, Wendy Liu, conducted an inspection of the Permittee's facility to determine compliance with the General Permit. As documented in the inspection report, the inspector observed that the Permittee was in violation of the General Permit. The Storm Water Pollution Prevention Plan (SWPPP) was not on site as required by SECTION A.10. The Permittee had not implemented appropriate Best Management Practices (BMPs) (as required by SECTION A. 8) as follows: wastewater from vehicle washing operations was directly discharged to the storm drain, an outdoor chemical storage area was located on the bare soil without any containment or coverage, and an above ground storage tank (AGT) containing waste oil was was not properly labeled and was partially exposed to the storm water. In addition, vehicle maintenance activities were located outside and not in the designated area under a cover. Further, discharge of oily grease to the ground surface was observed next to the AGT.
13. On November 16, 2005, the Regional Board Executive Officer (Executive Officer) issued a Notice of Violation (NOV) to the Permittee for failure to develop and implement a SWPPP including Monitoring Program (MP), inadequate BMPs and non-storm water discharges (vehicle wash wastewater). In the NOV, staff advised the Permittee of the penalties for violations of the General Permit. The NOV required developing and implementing of a SWPPP and MP, corrective actions to be taken immediately to cease all non-storm water discharges and

full implementation of BMPs. The Permittee was required to submit by December 16, 2005, the SWPPP and MP and certify in the SWPPP that all BMPs had been implemented and were being monitored.

14. On February 9, 2006, Regional Board staff (Jim Covin) hand delivered to the Permittee the annual report package forms and advised the Permittee to complete the report and submit as soon as possible to the Regional Board office.
15. On March 3, 2006, the Executive Officer issued a second NOV to the Permittee for failure to respond to the November 16, 2005 NOV. In addition, the second NOV indicated that the Permittee also failed to submit an annual report and respond to the NNC and NOVs dated August 24, 2005 and October 17, 2005, respectively. In the NOV dated March 3, 2006 staff advised the Permittee of the penalties for violations of the General Permit including failure to submit the SWPPP, the annual report and written response to address the non-storm water discharge to the storm drain and elimination of the source of pollutants both on the AGT and on the ground. The letter also stated that the above-mentioned documents were due to the Regional Board office immediately.
16. On March 20, 2006, March 21, 2006 and March 23, 2006 Regional Board staff (Jim Covin) called the Permittee to inform them of the mandatory fines that are required to be assessed for failure to submit the annual report, and requested a response to the NOVs.
17. On March 24, 2006, the Permittee submitted to Regional Board staff the required annual report. The subject annual report is not complete, does not include any visual observation data, stormwater sampling data and an explanation regarding the lack of the required information.
18. On March 29, 2006 Regional Board staff (Ann Zaskodna) spoke with Mr. Matt Blackburn regarding the uncompleted annual report and lack of any response to the NOVs from the Permittee. Mr. Matt Blackburn stated that his brother, Mr. Mark Blackburn is more familiar with violations and he will call back. As of June 2, 2006, Mr. Mark Blackburn did not respond.

CONCLUSION

19. The Permittee has failed to submit a SWPPP including MP, a complete and acceptable annual stormwater report and a written response to Regional Board staff addressing violations outlined in the NOVs. This is in violation of the General Permit.

POTENTIAL CIVIL LIABILITY

20. Section 13385 of the California Water Code (CWC) provides that any person who violates waste discharge requirements issued pursuant to the Federal Clean Water Act shall be civilly liable. Section 13385 (c) provides that civil liability may be administratively imposed by a Regional Board in an amount not to exceed ten thousand dollars (\$10,000) per violation for each day the violation occurs.

21. The Permittee is alleged to have violated the General Permit by not developing and implementing a SWPPP and MP, late and incomplete annual report, inadequate BMPs at the AGT, outdoor bin storage area, outdoor vehicle maintenance activities and unauthorized non-storm water discharge to storm drain (vehicle wash wastewater) since at least November 4, 2005 until March 31, 2006. Therefore, the maximum liability under section 13385(a) (1) of the CWC is:

POTENTIAL MAXIMUM PENALTY

PENALTY CATEGORY	CALCULATION	TOTAL
CWC § 13385 failure to comply with waste discharge requirements	(November 4, 2005 through March 31, 2006,) 146 days x \$10,000/day	\$1,460,000
Potential Penalty		\$1,460,000

RECOMMENDED CIVIL LIABILITY

22. Pursuant to CWC Section 13385 (e), the Regional Board is required to consider the following factors in determining the amount of civil liability to be imposed:
- Nature, circumstances, extent, and gravity of the violations: The violations included not developing a SWPPP and MP, late and not complete annual stormwater report, inadequate BMPs at the AGT area, the outside bin storage area, outdoor maintenance activities and not authorized non-storm water discharge to storm drain. The Permittee was enrolled in the Industrial Storm Water General Permit on July 21, 2004. and is expected to comply with all the requirements of the permit especially after one NTC dated August 24, 2005 and three NOV's from the Regional Board dated October 17, 2005, November 16, 2005 and March 3, 2006. Therefore a reduction in the assessment of the civil liability is not warranted.
 - Degree of pollutant toxicity: Non-storm waster discharges (vehicle wash water) containing primarily oil and grease, are toxic to aquatic life if discharged to a receiving water. Because the evidence that non-storm water pollutants have impacted receiving water is inconclusive, a reduction in the assessment of the penalty is warranted.
 - Susceptibility of the discharge to cleanup or abatement: The discharge of non-stormwater containing oil and other pollutants is not easily cleaned up once released into the storm drain and into the receiving water. However, the evidence that the pollutants reached the receiving water or caused damage is inconclusive, therefore, a reduction from the maximum civil liability is warranted.
 - The ability of the Permittee to pay: The Permittee has failed to provide Regional Board sufficient information to determine the Permittee's ability to pay.

- e) The effect on the Permittee ability to continue business: The Permittee has not provided any information to indicate payment of the civil liabilities will jeopardize the Permittee's ability to continue business.
 - f) Any voluntary cleanup efforts undertaken: The Permittee did not take appropriate actions to come into compliance. Therefore a reduction in the assessment of the civil liability is not warranted.
 - g) Prior history of violations: A review of Universal Waste Systems Inc. project file indicates no prior history of violations. Therefore, a reduction from the maximum civil liability is warranted.
 - h) Degree of culpability: The Permittee violated the terms of the General Permit by failing to develop a SWPPP and MP and to implement appropriate BMPs. In addition, the Permittee should have been aware of the potential threat to water quality and the need for effective BMPs as documented in the General Permit. Therefore a reduction in the assessment of the civil liability is not warranted:
 - i) Economic benefit or savings: Regional Board staff have examined the cost from non-submittal of a SWPPP and determined it to be at least \$1,000 per year. The Permittee was enrolled in the Industrial Storm Water General Permit on July 21, 2004, therefore, the cost saving is estimated to be \$2,000.
 - j) Other matters as justice may require: An additional matter to consider includes time spent by the staff of the Regional Board in evaluating the incidents of violation and preparing this Order and related documents. The Regional Board charges a rate of \$70 per hour for staff cost recovery. With total staff time of 42 hours, staff costs incurred by the Regional Board are estimated to total \$2,940.
23. After consideration of these factors, the Executive Officer proposes civil liability be imposed on the Permittee in the amount of \$15,940 which consists of the following:
- An assessment of \$1,000 for failing to submit a complete stormwater annual report.
 - An assessment of \$10,000, for discharging 1 day without implementing BMPs, pursuant to CWC Section 13385 (e).
 - An assessment of \$2,000 for avoided cost (\$1,000 x 2 years) for non-compliance with a SWPPP.
 - An assessment of \$2,940 for staff cost recovery (42 hours at \$70 per hour).

RECOMMENDED CIVIL LIABILITY

PENALTY CATEGORY	CALCULATION	TOTAL
Non-compliance with Order No. 97-03 DWQ by failing to submit the 2004-05 annual report.	CWC § 13399.33: Minimum penalty of \$1,000 for late and incomplete stormwater annual report.	\$1,000
SECTIONS (A.8.a) (A.8.b) Structural and Non-Structural BMPs, lack of good housekeeping practices and lack of overhead coverage.	CWC § 13385(e) for 1 day (November 4, 2005). $\$10,000 \times 1 = \$10,000$	\$10,000
Avoided Cost	\$1,000 per year for 2 years for non-compliance with SWPPP $\$1,000 \times 2 = \$2,000$	\$2,000
Recovery of Staff Costs	\$42/hour x 70 hours	\$2,940
Total Recommended Penalty		\$15,940

24. This matter will be heard before the Regional Board or Hearing Panel pursuant to CWC section 13323 unless the Permittee waives the hearing and pays the penalty of \$15,940 in full by July 7, 2006. The Permittee will be notified of the date, time, and location of the hearing.
25. Notwithstanding the issuance of this Complaint, the Regional Board shall retain the authority to assess additional penalties for violations of the requirements of the General Permit including but not limited to implementation of a SWPPP.
26. The Permittee may waive the right to a hearing. Should the Permittee decide to waive the right to a hearing, an authorized agent must sign the waiver form attached to this Complaint and return the executed waiver form to the Regional Board (320 West 4th Street, Suite 200, Los Angeles, CA 90013) by the close of business July 7, 2006. The permittee must submit a check in the amount of \$15,940 (payable to the State Water Resources Control Board-Cleanup and Abatement Account) with the signed waiver.
27. Regulations of the US Environmental Protection Agency require public notification of any proposed settlement of the civil liability occasioned by violation of the Clean Water Act including NPDES permit violations. Accordingly, interested persons will be given 30 days to comment on any proposed settlement of this Complaint.

Jonathan S. Bishop, P.E.
Executive Officer

June 2, 2006

